No. 173.

Brf. of Speed for Appellants.

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IN THE

SUPREME COURT

GEORGE A. POSTER as Sheriff of Noble County, Oklahoma Territory, and G. T. BRYAN as Clerk of said County.
Appellants.

vs.

I. T. PRYOR & Co., a co-partnership composed of I. T. Pryor; J. H. Morris; Howard Ross; I. T. Pryor; C. A. Keeran; The Stafford Land and Cattle Co., a Foreign Corporation doing business in the Territory of Oklahoma under the laws thereof; M. L. Hite; W. R. Moore; P. S. Witherspoon and Philip Witherspoon, partners doing business under the firm name and style of Witherspoon & Son; P. S. Witherspoon and Frank Witherspoon, doing business under the firm name and style of P. S. & F. Witherspoon; P. S. Witherspoon and Ed. P. Bomar, partners doing business under the firm name and style of Witherspoon & Bomar, and the 101 Livestock Company, a corporation.
Appellees.

173

BRIEF OF APPELLANTS.

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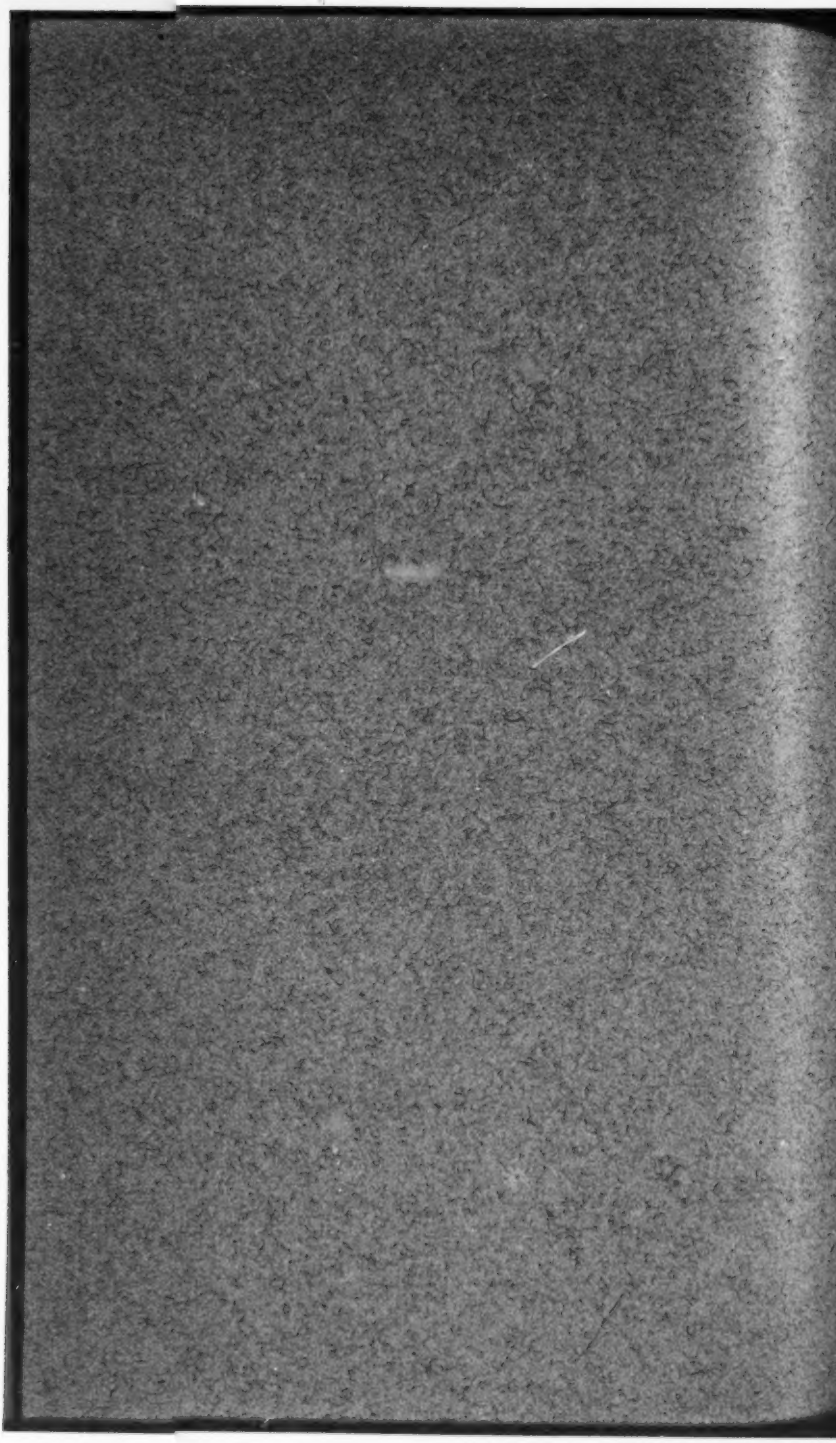
Attorney for Appellants.



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STATEMENT OF FACTS.

This is an appeal from the decision of the Supreme Court of Oklahoma Territory, reversing a decree of the District Court of Noble county in said Territory.

This case is in its facts and principals substantially the same as the cases of Gay vs. Thomas, 169 U. S. 264,

and Wagoner vs. Evans, 170 U. S. 588, save one question arising under a Territorial Statute enacted since those decisions, the matter being the taxation of cattle and other property in Indian reservations attached for judicial purposes to Noble county, Oklahoma Territory. The Ponca, Otoe and Missouri Indian reservations were attached to that county by an order of the Supreme Court pursuant to the act of congress organizing Oklahoma Territory, (Section eight, act of Congress May 2, 1890, 26 St. L. page 81.)

After the decisions of this court in the cases of Gay vs. Thomas, and Wagoner vs. Evans above named, a bill was put through the Oklahoma legislature which in substance was intended to do away with the effect of those decisions. The bill provided that property in the Indian reservations attached to counties should be taxed for the territorial funds, and for what was called in the bill, court funds, but not for any other of the county funds. (Session Laws 1899, p. 218). The county officers of Noble county proceeded to levy the taxes upon property in the reservations under the statements of law made by this court in the decisions above named, for territorial and all county funds. Thereupon the appellees filed a petition in the District Court of Noble county for an injunction, alleging that the county commissioners of Noble county had ordered the sheriff and treasurer to collect the taxes for both territorial and county purposes on all property in the reservation, and set out the purposes for which the levies were to be made showing that the county levy included funds as follows: Salary, court, poor and insane, road and bridge, contingent, supply, county school and sink-

ing, of which the court fund amounted to three mills and the other funds amounted to eighteen mills, in addition to the territorial levy of five and two-tenths mills, and praying that the collection of all the county funds except the court fund should be enjoined.

A demurrer to the petition as not stating facts sufficient to constitute a cause of action was filed, sustained, and a decree entered dismissing the petition.

Upon appeal to the Supreme Court of the Territory, the decision of the District Court was reversed. From this decision the county officers appeal.

ARGUMENT.

I.

The act of the Oklahoma legislature of 1899 is void because in contravention of the acts of congress.

II.

The act of 1899, whatever may have been intended, does not apply to the Ponca and Otoe and Missouri reservations.

III.

There can be no question that the taxes here objected to are valid and collectible under the decisions in Gay v. Thomas and Wagoner vs. Evans, supra, but objection is now made that, since those decisions were rendered, an exemption from part of the taxes is granted by the act of the Oklahoma legislature of March 10, 1899, (Oklahoma Session Laws 1899, pages 218 and 219.)

We contend that this act is void as being in plain violation of the act of congress of July 30, 1886, section

one of which provides that the legislatures of the Territories shall not pass local or special laws in any of the following enumerated classes, that is to say: * * * * "For the assessment and collection of taxes for territorial, county, township or road purposes."

We also contend that this act is in violation of the act of congress of May 2, 1890, (26 Stat. 81), the organic act of this Territory, section six of which provides that, "* * * * * * nor shall any unequaled discrimination be made in taxing different kinds of property, but all the property subject to the taxation shall be taxed in proportion to its value."

Substantially the same rule in spirit is in article one, section eight of the Federal Constitution which provides that, "All duties, imposts, and excises shall be uniform throughout the United States." This means, of course that they shall be the same throughout the United States.

Miller on the Constitution, page 239.

This section of the United States Constitution we believe is the source of the words so common in the taxation statutes of most of the states, "equal and uniform taxation." See also in U. S. R. S. sections 1924, 1925, 1977. Certainly the spirit is the same in each.

The act of the Oklahoma legislature of 1899 clearly intends the exact reverse of these acts of congress, and the decisions announced by this court. The territorial act is:

"Section 1. That from and after the passage and approval of this act no taxes shall be assessed, levied or

collected in any unorganized county, district or reservation which shall be, or which may hereafter be attached to any county for judicial purposes except taxes for the territorial and court funds."

By this act as is shown by the bill, attempt is made to have the people and property in the counties in Oklahoma pay taxes on seventeen funds, while the people and property in the reservations attached to the counties for judicial purposes only pay taxes on nine funds, and are exempted from payment of eight funds. The reservations attached for judicial purposes to Noble county are, as shown by the map, divided from it only by an imaginary line. The advantages of county government to the people in the reservation, have been referred to in this court in the Gay and Wagoner cases. Under this act of the legislature, the people and the property in the reservation, which get just as much benefit as the people and property in the county, from the salary fund, the poor and insane fund, the contingent fund, the supply fund and the sinking fund, and should have, if they do not have, the same benefit from the county school, and the road and bridge funds, do not have to contribute one iota to those funds.

In the course of his duty, the sheriff of the county has to go into the reservations to preserve peace and order, make arrests and serve subpenaes and warrants just as he does in the counties. The treasurer of the county must keep his office open, receive the taxes, issue receipts and do all other things for the people in the reservations as fully as he does for the people in the country proper. The probate judge must hold his office open for business from the reservation as much as for

business for the county, and administer the estates from the reservation exactly in the same way as the estates from the county. The register must keep his office open and have his records full and complete and ready for inspection for the benefit of the people in the reservation and the property in the reservation equally with those from the county. It is a matter of common knowledge that while the real estate transfers are much larger from the counties than from the reservations, yet the personal property mortgaged or transferred by bill of sale and recorded in the register's office, from the reservations, is vastly larger than that from the county. This is true not only of Noble county but every county in the Territory having reservations attached, and it is well known to every person who is well informed on this subject.

The poor and insane from the reservations have the same county rights as the people in the county, and the insane from the reservations go to the territorial asylum at the expense of the county. The contingent expense of the county must be borne for the benefit of the people in the reservation attached to the county as much as for the benefit of the people in the county. The supply fund must furnish supplies for the existence of the county, and for the benefit of the people in one locality as much as for the benefit of people in the other. The county records, furniture and stationery must be bought, fuel for the county officers, the services of clerks, janitors and the like must be supplied, and are as valuable to a person in the reservation as to a person in the county. Yet under this law, these expenses are to be borne wholly by the people of the county, and the people of the reservation

share the benefits without any expense to them whatever.

The county coroner must hold inquests in the reservations the same as in the county, and the expenses of inquest and burial of persons found dead there must be borne by the county alone.

This result is unjust, and the taxation by which it is reached is not equal and is not uniform. The question comes up naturally, when is taxation uniform and when is it not uniform? The answer is clear that taxation must be equal and uniform upon any particular class of property throughout the whole taxing district.

It is entirely possible that one kind of property, such as railroad property, may be taxed at a different rate under some laws from bank property or farm property, (although that has not been consented to by many of the courts), but in no case has any court held that taxation is equal and uniform upon the same kind of property where it is assessed at one rate in one part of a taxing district and at a different rate in another part of the same taxing district. On the contrary, every court has declared that such a difference is unequal, and that the statutes or any order of commissioners providing for it is not uniform and is illegal.

"Uniformity in taxing implies equality in the burden of taxation. * * * * * * *

"The uniformity must be co-extensive with the territory to which it applies. If a state tax it must be uniform over all the state, if county, town or city tax it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must be extended to all property subject to taxation, so that all prop-

erty may be taxed alike, equally, which is taxing by a uniform rule."

Gilman v. City of Sheboygan, 2 Black, 517.

"All kinds of property must be taxed uniformly or not at all, and equally throughout the jurisdiction."

Pine Grove Township v. Talcott, 19 Wall 666, 675.

I Desty, Taxation, p. 175-176.

"The county cannot be divided into taxing districts and the property therein be assessed differently upon county expenses."

Hutchinson v. Ozark Land Co., 38 Am. State Rep. 258.

Mauldin v. City Council, 46 Am. State Rep. 723.

Reelfoot Lake Levee Co. v. Dawson, 36 S. W. Rep. 1041.

Jones v. Memphis, 47 S. W. Rep. 138.

What is that lack of uniformity?

Janesville included some farming lands within its limits. A tax on these lands at half the rate of the city real estate was held illegal.

Knowlton v. Supervisors, 9 Wis., 378.

So in a hotel erection case.

Weeks v. Milwaukee, 10 Wis., 242.

So in case of a tax on realty only, to help build a railroad, "Property must be wholly exempt or not exempted at all."

Gilman v. Sheboygan, 2 Black, 516-518.

Zanesville v. Muskigum County, 5 Ohio, St. 589.

Fields v. Highland County, 36 Ohio, St. 476.

It precludes any exemption of private property where tax is laid for general or local purposes.

People v. McCreery, 34 Cal., 432.

People v. Eddy, 43 Cal., 331; 13 Am. Rep. 143.

"The legislature has no power to exempt property from one tax, or from taxation for one purpose and hold it liable to taxation for other purposes * * without violating the rule of uniformity. * * *"

Hale v. City of Kenosha, 29 Wis., 605.

"An act that certain territory annexed to the city of Memphis should be exempt from certain of the city taxes whose benefits did not reach that tract is illegal under a constitutional requirement that the taxes shall be uniform and equal throughout the city, county and state."

"Taxes must always be uniform and equal throughout the same jurisdiction. State taxes must be equal and uniform throughout the state; county taxes must be equal and uniform throughout the county; city taxes must be equal and uniform throughout the city."

Jones v. City of Memphis, 1898 (Tenn.) 47 S. W. 138.

A statute for levee purposes taxing all the real estate in a district except the area covered by standing water of Reelfoot Lake, is not equal and uniform and is illegal.

Reelfoot Lake Levee Co. v. Dawson, 36 S. W. 1041 (Tenn. 1898.)

Taxes must be uniform in respect to the persons and property within the jurisdiction of the body imposing the same.

Sleight v. People, 74 Ill. 48.

Taxes for either state or county purposes must be equal and uniform upon all persons and property within the state or county.

Mauldin v. City Council, 46 Am. State Rep, 723.

The rate must apply equally to everyone in each taxing district.

Henderson v. London Ins. Co., 41 Am. State Rep. 410.

The very words of the act of congress of July 30, 1886, (24 Stat. L. 170) forbid the result intended by the statute of 1899.

"An act to prohibit * * local or special laws. * * "For the assessment and collection of taxes for * * county * * * or road purpose."

Certainly a rule which requires the assessment of one county fund throughout the county but restricts the assessment of the other county funds to a part of the county is local and special as to the "assessment * * of taxes for * * county * * purposes *."

It certainly provides that property in certain localities shall be taxed differently from like property in other localities of the same taxing district.

The territorial statute therefore conflicts with these acts of congress and is void.

II.

The Ponca and Otoe and Missouri reservations having been attached to Noble county for judicial purposes long before the act of 1899 was passed, the act of 1899 did not apply to those reservations.

The act on its face is an act to exempt property in certain localities from part of the tax it would otherwise be liable for.

The rules as to such statutes are settled.

"Exemptions from taxation are regarded as in derogation of the sovereign and the common right, and there-

fore not to be extended beyond the exact and express requirements of the language used, construed strictissimi juris.

Vicksburg Ry. Co. v. Dennis, 116 U. S. 668.

Yazoo Ry. v. Thomas, 132 U. S. 174.

Norfolk Ry. v. Pendleton, 156 U. S. 673.

Keokuk Ry. v. Mo., 152 U. S. 301.

W. E. W. Ry. v. Alsbrook, 146 U. S. 294.

Sutherland Stat. Const., Sec., 364.

The burden of establishing the exemption is upon the party claiming it.

25 Enc. Law, page 159.

Boston Society v. Boston, 129 Mass., 178.

In re Swigert, 119 Ill., 83; 59 American Reports, 791.

Medical Society v. Neff, 53 N. Y., Supp. 1077.

Every presumption is against the exemption, and proof of the intent to exempt must be beyond a reasonable doubt.

25 Enc. of Law, pages 157, 158.

Exemption from taxation cannot be implied from the apparent spirit or purpose of the statute.

3 L. R. A. 206, last paragraph of foot note.

On the contrary, an exemption from taxation must be in express terms too plain to be mistaken; not by construction; and every doubt, if any exists, must be resolved against the exemption.

Ohio Life Co. v. Debolt, 16 How. 435-6.

Chicago Ry. v. Gaffey, 120 U. S. 575.

Let us now read the statute of 1899. (Oklahoma Session Laws 1899, p. 218.)

"Section 1. That from and after the passage and approval of this act no taxes shall be assessed, levied or collected in any * * reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the Territorial and Court funds."

Upon its face, by its terms, this statute is wholly in the future; the reservations described are those which "shall be or which may hereafter be attached to any county."

It does not describe reservations which have heretofore been or now are attached to a county.

Appellees ask that the court will so construe the statute, and read into it such additional words, as will make the statute cover reservations which then were attached to a county.

But this statute upon its face is clear in its meaning Nothing is ambiguous. Where the language is clear it does not admit of construction.

Lake County v. Rollin, 130 U. S., p. 662.

Yerkes v. U. S., 173 U. S., p. 439.

A statute is always held to be prospective in its operation unless the language is express to the contrary or there is a necessary implication to that effect.

Harvey v. Tyler, 2 Wall., 346-347.

People v. McCall, 94 N. Y., 589.

People v. O'Brien, 111 N. Y., 60.

The spirit of a statute is to be collected from the letter of the statute, not inferred from extrinsic circumstances.

Potter's Dwarris Stat. Const. pp. 182, 183.

Brewer v. Blougher, 14 Peters, 178.

Story Conflict Laws, Int. Remarks, p. 10.

"The rule by which we are to be guided is to look at the precise words and to construe them in their ordinary sense, unless it would lead to absurdity or manifest injustice."

Chew Heong, 112 U. S., p. 555.

"When the language of the statute is clear it is no for a court to make it embrace cases not described, because no reason is seen why they were not included."

Scott v. Reid, 10 Peters 524, 526, 527.

This is a leading case upon this point and has been followed always, 130 U. S., 670; 157 U. S., 37; 8 L. R. A., 260; 87 F. R., 665; 128 Mass., 231; 64 Wis., 110.

"The first resort is in all cases to the natural significations of the words employed, in the order and grammatical arrangement in which the framers of the instrument have placed them. If * * * the words embody a definite meaning, which involves no absurdity and no contradiction between different parts of the same writing, then the meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed; in such a case there is no room for construction * * *."

"That which the words declare is the meaning of the instrument; and neither courts nor legislatures have the right to add to or take from that meaning."

Newell v. People, 7 N. Y., 97.

People v. Rathbone, 145 N. Y., 430, 440.

The language of the statute certainly does not include reservations which had been attached to counties; and so does not apply to the Ponca, Otoe and Missouri reservations.

The language must be construed out of its order and grammatical arrangement if it is to be held to include these reservations.

This the decisions of this and every court forbids.

For these reasons we think the decision of the Supreme Court of Oklahoma should be reversed.

Many objections to the procedure by the county officers were made in the petition and argued in the District and Supreme Courts, but the decision in the latter court was based upon the theory that the act of 1899 was valid, and the acts of the officers valid as to the taxation for Territory and Court funds.

The only questions in this case therefore are whether the act of 1899 is valid and whether it applies to reservations already attached to counties when the act was passed. We think each must be answered in the negative.

Respectfully submitted,

HORACE SPEED,

Attorney for Appellants.